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Supreme Court of the United States

OCTOBER TERM, 1989

IN RE FOLDING CARTON ANTITRUST LITIGATION

Petition Of Certified Plaintiff Class In MDL-250 For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a court of appeals has subject matter jurisdiction under Article III of the Constitution to vacate a district court's order approving a class action settlement agreed to by all parties where the appellants have no standing in the litigation.

2. Whether the judgment of the court of appeals vacating the district court's order approving a class action settlement where the only objectors had no standing in the litigation so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

LIST OF PARTIES

Petitioner is the plaintiff class consisting of:

All persons in the United States (excluding defendants, their subsidiaries, affiliates, or agents), who purchased folding cartons from any of the defendants in these actions during the period from January 1, 1960 to December 31, 1974.

The defendants were Alton Box Board Company, American Can Company, Brown Company, Burd & Fletcher Company, F. N. Burt Company, Inc., Champion International Corporation, Consolidated Packaging Corporation, Diamond International Corporation, Eastex Packaging, Inc., Federal Paper Board Company, Inc., Fibreboard Corporation, The A. L. Garber Company, Inc., Georgia-Pacific Corporation, Gulf States Paper Corporation, Hoerner Waldorf Corporation, International Paper Company, Interstate Folding Box Company, The Mead Corporation, Olinkraft, Inc., Packaging Corporation of America, Potlatch Corporation, Rexham Corporation, St. Regis Paper Company, Weyerhaeuser Company, and Container Corporation. These defendants were not parties to the proceedings in the court of appeals. The class representatives in the court of appeals were Beatrice Companies, G. Heileman Brewing Co., Grist Mill Co., Land O'Lakes, Inc., Cumberland Farm Dairies, Inc. and Pantry Pride Enterprises, Inc. Anheuser Busch Companies, Inc., also was a party in the court of appeals. The United States was the appellant in the court of appeals. The Folding Carton Administration Committee, which was created by the district court to act on its behalf in settlement distributions and in the court of appeals, filed a brief on behalf of the district court in the court of appeals.

This Petition should be read in conjunction with the Petition for Writ of Mandamus or Prohibition to the Honorable Harlington Wood, Jr., Richard D. Cudahy and Michael S. Kanne, Judges of the United States Court of Appeals for the Seventh Circuit, or, in the Alternative, Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit filed on December 8, 1989, under the caption *In re Hubert L. Will*, which seeks relief from the same judgment as this Petition.

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Petition Of Certified Plaintiff Class In MDL-250 For A Writ Of Certiorari To The United States Court Of Appeal's For The Seventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, the certified plaintiff class in *In re Folding Carton Antitrust Litigation*, MDL-250, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in this case on September 11, 1989.

Opinions Below

The court of appeals issued the order from which petitioner seeks relief on September 11, 1989 ("*Folding Carton II*") (Appendix A).[1] The court of appeals issued a written opinion on August 9, 1989, which appears at 881 F.2d 494

[1] References are to the Appendix to the Petition for Writ of Mandamus or Prohibition to the Honorable Harlington Wood, Jr., Richard D. Cudahy and Michael S. Kanne, Judges of the United States Court of Appeals for the Seventh Circuit, or, in the Alternative, Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit filed on December 8, 1989, under the caption *In re Hubert L. Will*, which seeks relief from the same judgment as this Petition.

and which is the basis for the September 11, 1989, order (Appendix B).

The court of appeals denied Petitions for Rehearing and Suggestion for Rehearing In Banc filed by Judge Hubert L. Will and certain class members on September 15, 1989 (Appendix E).

The following opinions and orders relate to this litigation and are also reproduced as appendices: the court of appeal's opinion issued September 5, 1984, reported at 744 F.2d 1252 (Appendix G); the district court's opinion, issued February 17, 1983, reported at 557 F. Supp. 1091 (Appendix I); and the district court's opinion, issued May 24, 1988, on remand from the court of appeal's September 5, 1984 decision, reported at 687 F. Supp. 1223 (Appendix J).

JURISDICTION

The judgment of the court of appeals was entered on September 11, 1989. On September 15, 1989, the court of appeals denied petitioner's Petition for Rehearing and Suggestion for Rehearing In Banc (Appendix E). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

The question in this case is whether a court of appeals has jurisdiction to vacate the approval of a settlement agreed to by *all parties* to the litigation and then remake the settlement to its liking where the only appellants had no standing in the litigation. This Court has consistently held that when a case becomes moot for lack of controversy at any stage of the proceedings, federal courts no longer have jurisdiction to preside over the litigation. *E.g., Steffel v. Thompson,* 415 U.S. 452 (1974); *United States v. Munsingware,* 340 U.S. 36 (1950). The judgment of the court of appeals is in direct conflict with this long line of decisions by this Court.

Besides injecting itself into a case that was settled with the consent of all parties and as to which it had no jurisdiction, the court of appeals took the further misstep of attempting to reshape one part of the settlement because the court of appeals felt it was inconsistent with the spirit of its earlier decision in *In re Folding Carton Antitrust Litigation*, 744 F.2d 1252 (7th Cir. 1984), *cert. dismissed sub nom. G. Heileman Brewing Co. v. Folding Carton Admin. Comm.*, 471 U.S. 1113 (1985) ("*Folding Carton I*"). The ruling of the court of appeals is an unprecedented exercise of judicial activism and marks such a profound departure from the accepted and usual course of judicial proceedings as to require the exercise of this Court's supervisory powers to set matters straight.

A. Background: The Settlement Agreement, The Reserve Fund And The Court of Appeal's Decision in *Folding Carton I*

Petitioner is the plaintiff class of over 2700 purchasers of folding cartons who sought damages from 24 defendants in multi-district antitrust litigation begun in 1976. The plaintiff class was certified by order of the district court on April 19, 1977, and an executive committee of plaintiffs' counsel was appointed to pursue the litigation on behalf of the class. After four years of pretrial proceedings and extensive discovery the class litigation was settled with all defendants, and defendants paid approximately $200 million into an escrow account. The district court appointed an Administration Committee to assist it in administering this settlement fund.

The Administration Committee reviewed all claims filed. By March 1980, the Administration Committee recommended net payments of approximately $200 million to claimants. Notices were sent to all claimants and a report was filed with the district court by the Committee. Over $200 million was paid out to claimants in April 1980. The payout to class members represented approximately 97% of

the settlement fund. As part of the distribution, part of the settlement fund was set aside after fees and expenses to cover mistakes in calculation, claims sent but not received or acted upon, costs of administration and potential late claims. After March 1980, late claims were processed and paid but by mid-1982, due in large part to prudent claims administration and investment, approximately $6 million still remained in the fund (the "reserve fund").

In the fall of 1982, the plaintiff class and the defendants both filed motions claiming the $6 million in the reserve fund for themselves. At the request of the district court, the Administration Committee responded and, relying on a *cy pres* theory, suggested that any excess funds after payment of any additional late claims be set aside in a foundation for research into the antitrust laws and complex multidistrict litigation. The district court considered the objections of certain class claimants, the defendants and the recommendations and suggestions of the Administration Committee. In its 1983 opinion, the district court decided that the excess funds should be used first to pay late claimants and that any funds remaining thereafter be used to establish the research foundation suggested by the Administration Committee. *In re Folding Carton Antitrust Litigation,* 557 F. Supp. 1091 (N.D. Ill. 1983).

Thereafter, six of the class claimants and two of the original settling defendants appealed the district court's decision. After briefing and argument the court of appeals affirmed in part and reversed in part in *Folding Carton I.* The court of appeals held that the proposed payments to previously unpaid late claimants was proper. However, it reversed the district court's decision to use the reserve fund to establish a tax-exempt research organization. Instead, the court of appeals directed that excess funds after payment of late claims be deposited pursuant to 28 U.S.C. §§ 2041, 2042 to be held by the United States as an escheat. In so ruling the court stated that its decision was "clearly correct under

§§ 2041, 2042 and that the issue seldom recurs." It also stated that its direction to deposit funds pursuant to 28 U.S.C. § 2042 was consistent with a congressional mandate for disposition of the fund. For these reasons the court concluded that Supreme Court review was unwarranted. It therefore denied the pending motion for stay of its mandate, which was issued on October 17, 1984.

B. Petitions Filed In This Court For Review Of *Folding Carton I* And The Reserve Fund Settlement

In January 1985, Judges Erwin A. Robson and Hubert L. Will filed in this Court their petition for a writ of mandamus, or in the alternative for a writ of certiorari to the Seventh Circuit Court of Appeals. Several class representatives also filed a petition for a writ of certiorari. The grounds cited for issuance of the writ were that the rulings of the court of appeals contravened the sound exercise of appellate jurisdiction when it substituted its findings and discretion for that of the district court and that the court's interpretation of § 2041 and § 2042 was a serious error of law and created a conflict in the circuits.

Settlement negotiations among all the parties took place while these petitions were pending. On March 27, 1985, a settlement proposal executed by representatives of the class members (including the paid claimants, late claimants and all class members who objected to the initial settlement) and all objecting defendants was submitted to the district court for its approval. The settlement provided for the payment of attorneys' fees and costs of administration and the payment of any additional late claims until December 31, 1985. The balance of the reserve fund was to be divided—half to all class members who received or were entitled to receive payments and half to two or more Chicago area law schools "for the purpose of further research projects involving analysis and enforcement of antitrust laws and/or the improved

management of complex multi-party litigation and/or scholarship assistance for needy students".

After *Folding Carton I* was decided, class counsel on six occasions notified the United States Attorney in Chicago of the status of the proceedings. At the hearing on March 27, 1985, one of the attorneys for the class informed the district court that at a meeting the day before, the Chief of the Civil Division of the United States Attorneys Office in Chicago indicated that the government had reviewed the proposed settlement and had no objection to it. On March 28, 1985, the district court approved the settlement reached by the parties and entered the Stipulated Order of Settlement. As provided in the order, the petitions for certiorari then pending in this Court were promptly withdrawn. Judges Robson and Will also withdrew their petition for mandamus.

The settlement was then implemented. Notices were published, late claims were filed and the Administration Committee reviewed them. The district court entered orders approving late claims on September 29, 1986, and directed that payments be made from available funds as soon as practicable. Payments were made in October 1986. After payment of late claims and reasonable costs of administration and attorneys' fees, approximately $3.6 million of the reserve fund remained. This fund was divided into two equal parts as provided in the settlement order, and on December 19, 1986, the district court ordered payment of half of the funds pro-rata to all class members who previously received payments on their claims. The payments were made on December 30, 1986.

In October 1986, the district court directed the Administration Committee to advise the Chicago area law schools of the existence of certain funds available to them under the Stipulated Order of Settlement and to request that proposals be submitted on or before November 15, 1986. All the Chicago law schools submitted proposals. The district court, with assistance from the Committee, reviewed the proposals

and entered two orders directing funds be paid $1.2 million to Loyola University of Chicago and $156,000 to the University of Chicago. The payment of $1.2 million to Loyola University was made on March 12, 1987, but the money is being held in escrow pending disposition of all matters in the litigation. The payment to the University of Chicago has not yet been made and remains in the reserve fund.

C. The Orders Reviewed In *Folding Carton II*

On February 11, 1987, a *qui tam* complaint captioned *United States ex rel. Paul Houck v. Folding Carton Administration Committee, et al.*, No. 87 C 1253 was filed under seal in the United States District Court for the Northern District of Illinois. Plaintiff Paul Houck sued the Committee, its members, their law firms and counsel for the various parties who signed the Stipulated Order of Settlement. Houck claimed the settlement was contrary to the law of the case as set forth in *Folding Carton I*. Houck sought, in the name of the United States, to recover damages against defendants under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, and on the common law theories of breach of fiduciary duty and constructive trust. As provided in the False Claims Act, the *Houck* complaint was held under seal for a period of 60 days to allow the government to consider whether it would intervene and take over prosecution of the case. 31 U.S.C. § 3730(b)(2). After obtaining an extension of this period, the government declined to intervene, and so advised the district court on May 12, 1987. On January 20, 1988, the district court in the *Houck* case granted defendants' motion to dismiss on the grounds of lack of subject matter jurisdiction. 1988-2 Trade Cas. (CCH) ¶ 68,176 (N.D. Ill. Jan. 20, 1988). In February 1988, Houck appealed.

On July 9, 1987, two months after the government declined to pursue any interest it might have in *Houck* and 18 months after being explicitly advised of its potential interest in the reserve fund, the government filed motions in

the district court to intervene and to vacate the Stipulated Order of Settlement in *In re Folding Carton Antitrust Litigation.* On May 24, 1988, the district court (Will, J.) denied the government's motions to intervene and to vacate the settlement. 687 F. Supp. 1223. Like Houck, the government appealed.

D. The Court of Appeal's Decision in *Folding Carton II*

In *Folding Carton II* the court of appeals first affirmed the district court's denial of intervention sought by the government and also affirmed the dismissal of *Houck* for lack of subject matter jurisdiction. Thus, the court of appeals affirmed the two district court opinions which eliminated from the litigation the only two litigants who objected to the settlement and who could have formed the basis for a case or controversy.

But instead of simply ending its opinion at that point for lack of a case or controversy, the court of appeals went on to address the settlement agreed to by all parties. The court affirmed one part of the settlement: allowing the class to keep the one half of the reserve fund that had been distributed to class members. But the court of appeals rejected the other part of the settlement—the disposition to the law schools for research relating to antitrust litigation. Instead the court remanded the case with directions that the reserve fund in this antitrust case be disposed of under *cy pres* principles, but not for any purpose relating to antitrust research. The court of appeals cited no authority for its reversal of the district court's approval of the *cy pres* disposition of the reserve fund to the law schools, and on remand it invoked Seventh Circuit Rule 36 to take the case away from Judge Will.

REASONS FOR GRANTING THE WRIT

I. This Court Must Prevent the Courts of Appeal From Deciding Matters in the Absence of Any Case or Controversy to Protect Against the Perils of Judicial Adventurism

It is axiomatic that in our constitutional framework the task of the judiciary is to resolve controversies and not to reach out beyond that special competence to step into a case where the controversies between the parties have been fully resolved. *Diamond v. Charles*, 476 U.S. 54, 61-62 (1986); *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982); *see also Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239-41 (1937). If a controversy has been settled by all the parties to the litigation, it is considered moot and federal courts are without power to decide moot questions. *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974); *Local No. 8-6 v. Missouri*, 361 U.S. 363 (1960). "The rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Steffel v. Thompson*, 415 U.S. at 459 n. 10 (1974) (citations omitted).[2]

The only way the court of appeals could properly reach the merits of the settlement agreed to by all parties and approved by the district court would be if some third party gained entry into the litigation with proper standing to object. But the court of appeals did a strange and unprecedented thing in *Folding Carton II*. It affirmed two separate orders of two district courts which denied standing to the only two objectors to the settlement. It affirmed Judge Will's denial of the government's petition for leave to intervene and it affirmed Judge Norgle's dismissal of the *qui tam* relator's

[2] *See also Christianson v. Colt Industries Operating Corp.*, 484 U.S. 985 (1988); *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 440-41 (1985); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981).

complaint. The government and the *qui tam* relator were the only objectors to the settlement. Because these parties had no standing to object, there was no Article III case or controversy left to adjudicate. Without a case or controversy as a predicate to further judicial competence, the Court in *Folding Carton II* should simply have ended its opinion at that point. *Warth v. Seldin*, 422 U.S. 490, 498 (1975); *Freedom From Religion Foundation, Inc. v. Zielke*, 845 F.2d 1463, 1467 (7th Cir. 1988) ("[I]f the litigants do not have standing to raise their claims the court is without authority to consider the merits of the action."). The court of appeals had no subject matter jurisdiction to proceed to restructure the parties' settlement after it affirmed the denial of standing to the government and the *qui tam* relator.

II. The Writ of Certiorari Should be Granted to Clarify the Role of the Courts of Appeal in Reviewing Class Action Settlements

A. The Judgment of the Court of Appeals is an Intolerable Intrusion into a Settled Case

Courts may not intrude into settled matters even though the courts may have very different views of what the outcomes ought to be if they were parties. *In re S.L.E. Inc.*, 674 F.2d 359, 364 (5th Cir. 1982) ("Judicial power is not exercised . . . to confirm the wisdom of private settlements already reached and honored.") (citations omitted). But that is exactly what the court of appeals did here. The court of appeals cited no precedent for its intrusion into the parties' settlement, but its discussion of its claimed power to do so is instructive. After observing that "some cases, however, may be appropriately settled by the parties on a different basis even after being resolved otherwise by this court," 881 F.2d at 499, the court attempted to distinguish this case on two grounds, both of which are wrong.

First the court of appeals stated that the Administrative Committee and the district court were not in the "true and

ordinary sense" prevailing parties who could determine what to do with the reserve fund. But the court omitted from its analysis the interest of the one party that unquestionably had the strongest equitable interest in the disposition of the reserve fund—namely the plaintiff class for whom the settlement fund, and the resulting reserve fund, was created in the first place.

Certain class representatives contended all along that the full reserve fund should be paid only to class members, the only victims of the price fixing conspiracy. That is why these class members vigorously opposed the establishment of the Foundation, opposition that led to the Foundation's demise in *Folding Carton I*. The settlement finally reached in 1986—half of the fund to the class and half for law school grants—was a fair settlement for the class. And the class has a vital interest in seeing that the settlement is carried out, including the grants to the law schools.

In its reasoning the court of appeals totally ignored the interest of the class in the disposition of the reserve fund, an interest perhaps of more importance than that of any other party to the litigation. The class gave up a valuable and irretrievable right, its certiorari petition to this Court from what it firmly believed to be the plainly erroneous ruling in *Folding Carton I* that the reserve fund should escheat to the government—a non-party to the case. The class gave up its certiorari petition as part of a settlement in which it traded its claim to *all* the reserve fund for the certain bird-in-hand it obtained in the settlement—one half the reserve fund with the other half going to the law schools for antitrust *cy pres* uses.[3]

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[3] Because the district court and certain class members sought review on behalf of the class in this Court, the decision in *Folding Carton I* was not final and was not an impediment to settlement. *See Air Line Stewards & Stewardesses Ass'n v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1167-69 (7th Cir. 1980), *aff'd on other grounds sub nom., Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982). Thus, while the certiorari petitions were pending and in the absence of finality, the parties were free to fashion a settlement appropriate to their particular needs.

The second reason assigned by the court of appeals for striking down the *cy pres* disposition to the law schools was that the settlement failed to give proper respect to the court's "direction" in *Folding Carton I* that the reserve fund escheat to the government. The obvious problem with this analysis is that the government was never a party in either *Folding Carton I* or *Folding Carton II*, and the court had no jurisdiction to "direct" that the funds be given to the government or any other non-party—*suggest* perhaps, but not *direct*.

The panel's application of the *cy pres* doctrine to rewrite this settlement agreement was improper. The *cy pres* doctrine traditionally applies where a settlement agreement is *silent* concerning the distribution of unclaimed funds. *E.g.*, 2 H. NEWBERG, NEWBERG ON CLASS ACTIONS § 10.15 at 372 (1985). The doctrine does not apply here, where the parties expressly agreed on the distribution of the reserve fund, the settlement agreement was approved by the district court and no party had standing to object to its approval. *See Wilson v. Southwest Airlines, Inc.*, 880 F.2d 807, 816 (5th Cir. 1989) (approving settlement on appeal of district court's *cy pres* order where only objector's motion to intervene was denied).

Moreover, the *cy pres* doctrine "puts the unclaimed fund to its next best compensation use, e.g., for the aggregate, indirect prospective benefit of the class . . . . " 2 H. NEWBERG, NEWBERG ON CLASS ACTIONS § 10.17 at 374; *e.g.*, *Six (6) Mexican Workers v. Arizona Citrus Growers*, 641 F. Supp. 259, 265 (D. Ariz. 1986) ("When the entire damage fund is not claimed by class members, the fund is put to its 'next best' use which furthers the original purpose of compensation of individual victims."); *see also Simer v. Rios*, 661 F.2d 655, 675-77 (7th Cir. 1981), *cert. denied*, 456 U.S. 917 (1982). If the other half of the fund can't go directly to the class, where better than a use squarely related to antitrust enforcement? Granting half of the fund to the law schools to promote better enforcement of the antitrust laws and better understanding of complex litigation is certainly the *next best*

use of the money and in the best interest of the class, the victims of the nationwide antitrust conspiracy.

What is so strikingly odd about the decision in *Folding Carton II* is that the court appeared to order that any use of the reserve fund *other than* one relating to the antitrust laws will be tolerated on remand. This isn't what the class had in mind when it reluctantly agreed to the settlement. Any *cy pres* disposition of the balance of the fund, to make any sense *in the context of this case*, had to go to recipients whose work related at least in part to better enforcement of the antitrust laws, which by nature involve complex litigation. Any other use would torture the *cy pres* doctrine beyond all recognition.

Because the opinion gives us no clue, we cannot ascertain what standard of review the court of appeals applied in reversing the district court. The standard cannot be error of law as the district court applied the time honored "next best use" *cy pres* doctrine which by no stretch can be deemed error. If it was the more deferential standard, abuse of discretion, then two elements are missing: abuse and an objecting party. *See Barona Group of Capitan Grande Band v. American Management & Amusement, Inc.*, 840 F.2d 1394 (9th Cir. 1987), *cert. dismissed*, 109 S. Ct. 7 (1988). It is not surprising that the court of appeals cited no authority whatsoever for reshaping to its liking the settlement agreed to by all parties and approved by the district court. There is none.[4]

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[4] The court of appeals cited no authority for its strange *cy pres* ruling, although there is one case in the dim reaches of the past that might support its view. In *DeCosta v. DePas*, 27 Eng. Rep. 150 (Ch. 1754), a Jewish testator established a testamentary trust of 1200 pounds to be used to care for and teach the Jewish religion to poor Jewish children. But in 1754 Judaism was not a recognized religion in England so the chancery court invalidated DePas's testamentary trust and instead ordered the money used to support an Anglican preacher to instruct the children in his care in the Christian religion.

B. The Judgment of the Court of Appeals Is Diametrically Opposed to Sound Federal Judicial Administration

The court of appeal's attempt to reshape the settlement marked an extreme departure from the proper role of the appellate courts in reviewing class action settlements. Most class actions are complex lawsuits which impose heavy burdens on the federal judicial system. *In re Folding Carton Antitrust Litigation* was no different. It was one of the largest antitrust cases ever to enter the federal courts, with a class of over 2700 and 24 defendants. Fortunately, most class actions are settled, and over the years the courts have fashioned sensible mechanisms for facilitating settlement of these complex cases. *See In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). Preserving the discretion of district courts in approving settlements that end class litigation and the limited scope of review by courts of appeal are essential to this workable settlement methodology. *See, e.g., Gautreaux v. Pierce*, 690 F.2d 616 (7th Cir. 1982).

The serious threat posed by the court of appeals ruling is that the ruling endangers the judicial processes which have been carefully developed to oversee class settlements, an important part of which is the limited role of the courts of appeal. The court of appeals here ignored the limitations on its role and instead inserted itself as an advocate with standing to upset one part of the settlement agreed to by all parties to the litigation. What makes the court's ruling all the more bizarre is that after it (1) denied standing to the only objectors with the potential to become parties, and (2) ordered that the fund remaining in this antitrust case *not* be used for antitrust purposes, it (3) suggested that the reserve fund might better go to a research institution of *its* choice (the Federal Judicial Center) rather than the research institutions agreed to by the parties (the law schools).

If the ruling below is allowed to stand, it will be an open invitation to the courts of appeal to substitute their unfettered discretion for that of the parties and the district courts as to how class cases should be settled. As a result, especially in the many class actions where settlement funds remain unclaimed, class litigation will not have the finality that settlements are supposed to achieve. And that is just what has happened here. Already, in addition to the University of Chicago and Loyola University of Chicago law schools, a host of applicants have sought intervention below to claim a share of the reserve fund.[5] Another round of litigation is in store, surely in the district court and perhaps in the court of appeals if on review of the next district court order the court of appeals again decides it dislikes the way the reserve fund is disposed of. No end is in sight, and the mischief created here, if not checked from spreading by this Court, is more than our already overloaded judicial system should bear.

[5] Petitions for leave to intervene seeking a grant of the reserve fund have already been filed in the district court by The Chicago Lawyers Committee For Civil Rights Under Law, The Legal Assistance Foundation, The Legal Aid Society, the Federal Judicial Center and the State Attorneys General For Antitrust and Consumer Protection Law Enforcement.

CONCLUSION

For the foregoing reasons the Court should issue the writ of certiorari sought by this Petition.

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Respectfully submitted,

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